

CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OLC 76-0775

26 March 1976

Honorable David N. Henderson, Chairman  
Subcommittee on Manpower and Civil Service  
Committee on Post Office and Civil Service  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

There is now before your Subcommittee H.R. 12080, a bill to strengthen merit principles in the Civil Service. I wish to express my concern about the possible impact of this bill on the unique responsibilities of this Agency and on my special authorities as Director of Central Intelligence.

First, let me assure you that we fully adhere to the merit principle and have developed workable procedures and safeguards to ensure its implementation in our personnel programs, tailored to the special need to protect our unique organizational and personnel requirements. My particular concern is the protection of the security of foreign intelligence and of intelligence sources and methods.

Over the years, in recognition of this Agency's unique requirements and security considerations a number of Legislative and Executive branch measures have been implemented to exempt the Agency from Civil Service legislation relating to appointment, promotions, separations, and other matters. Certain provisions in H.R. 12080 relating to the responsibilities and jurisdiction of the Civil Service Commission and the proposed Board on Federal Employee Appeals, however, would seem to conflict with these special measures and would appear to impair the authorities of the Director of Central Intelligence. My concern is not directed toward the Agency's continued adherence to the merit and non-preferential treatment provisions of the bill as enumerated in Section 3001. Rather, it is to reinforce and make clear that, except as provided in subsections 3001(b)(2) and (3), the Director of Central Intelligence retains authority to implement and enforce these principles within the CIA. I would like to mention a few of my specific concerns and request that the bill be amended to reaffirm the special authorities and responsibilities of the Director of Central Intelligence.



Several provisions of law, including the National Security Act of 1947, the Central Intelligence Agency Act of 1949, and the Classification Act of 1949, (5 U.S.C. 5102) provide the basis for exempting the Agency from general personnel management legislation. These various provisions of law are based on the need for the CIA to protect the confidentiality of intelligence sources and methods (Section 102(d)(3) of the National Security Act of 1947, and Section 6 of the Central Intelligence Agency Act of 1949) and the need for flexibility in melding personnel resources to the rapidly shifting requirements of our foreign relations. Thus, under Section 8 of the CIA Act the Agency is authorized to expend funds for "personnel services without regard to limitations on types of persons to be employed" and notwithstanding any other provisions of law. In addition, Section 6 of the CIA Act exempts the Agency from any laws requiring "the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency." Finally, Section 102(c) of the National Security Act authorizes the Director of Central Intelligence to terminate any Agency employee whenever "necessary or advisable in the interests of the United States."

When Congress enacted the Classification Act of 1949, it gave explicit recognition to these statutes and considerations by providing a specific exemption for the CIA. Based on these special exemptions, Congress over the years has recognized the Agency's needs by exempting the CIA from particular legislation affecting Government personnel management procedures. Thus, for example, the Agency is excepted from the provisions of the Performance Rating Act of 1959 (5 U.S.C. 4301) and the amendment to the Civil Service Act of 1883 requiring the Commission to report employee requirements to Congress (5 U.S.C. 2953).

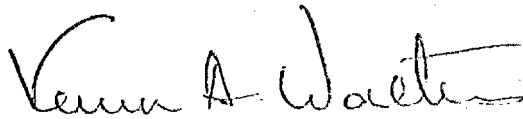
I am concerned that certain provisions of H.R. 12080 are not clear in recognizing these important national security concerns and my conflict with the legislatively recognized needs of the Agency. For example, Sections 1301 and 1302 of the bill, which would require the Civil Service Commission to prescribe, investigate, evaluate, and enforce rules and regulations designed to strengthen adherence to merit principles, could conflict with the responsibilities and duties of the Director of Central Intelligence and the CIA as noted above regarding protection of intelligence sources and methods and the need for special personnel procedures. Also, Section 3002 of the bill, relating to periodic review of excepted services by the Commission, could conflict with the Agency's need to retain the confidentiality of records, organization requirements, and personnel management. As a further example, under Section 7702 of the bill, a decision of the Board on Federal Employee Appeals could direct the continued employment of an Agency employee whom the Director found it necessary to terminate pursuant to his authority under Section 102(c) of the National Security Act of 1947.

For these reasons, I hereby request that H.R. 12080 be amended to make clear that none of its provisions conflict with the statutory authority of the Director of Central Intelligence. I am enclosing for your consideration a suggested amendment to this effect.

The Civil Service Commission recognizes our concern as to the impact of H.R. 12080 on the Agency's statutory authorities and the need for a clarifying amendment.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,



Vernon A. Walters  
Lieutenant General, USA  
Acting Director

Enclosure

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Requested Amendment to H.R. 12080

1. Insert directly above line 15 of page 27 of H.R. 12080, the following:

"EXCEPTION"

"Sec. 7. Except for the provisions of Section 3001 of this Act, this Act shall not apply to the Central Intelligence Agency. Nothing in this Act shall be construed to conflict with the duties, authorities, and responsibilities of the Central Intelligence Agency and the Director of Central Intelligence under the National Security Act of 1947, as amended, (50 U.S.C. A.403) and the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. A.403 a.-e.)."

2. On line 16 of page 27 of H.R. 12080, replace "SEC. 7" with "SEC. 8."